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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1429 OF 2005
IN
SUIT NO.1337 OF 2005

M/s.Ishwar Bhuvan Refreshments Annexe)
whose partners are Ishwar P. Barot and)
Jugal P. Barot both Indian having it)
Office at 361, Sheikh Memon Street)
Mangaldas Market, Mumbai 400 002).. PLAINTIFF

VERSUS

1) M/s.Rajdhani)
having its place of business at)
Sai Arcade, next to Union Bank of)
India, 1st Floor, Netaji Shubhash)
Road, Mulund (W), Mumbai 400 080.)

2) Mangal Anjaria)
Indian inhabitant of Mulund)
having his address at Sai Arcade)
next to Union Bank of India, 1st)
Floor, Netaji Shubhash Road)
Mulund (W), Mumbai 400 080.)

3) Dhiresh Momaya)
also Indian inhabitant of Mulund)
and having his address at Sai)
Arcade, next to Union Bank of India)
1st Floor, Netaji Shubhash Road)
Mulund (W), Mumbai 400 080.).. DEFENDANTS

Mr.V.R.Dhond with Mr.Manish Saurashtri and Mr.Utkarsh Tiwari i/b.Shantilal & Co. for the Plaintiff.

Mr.Niranjan Lapasiya i/b.M/s.Niranjan & Co. for the Defendants.

CORAM : SMT. NISHITA MHATRE, J.

JUDGMENT RESERVED ON : 11TH JULY 2006

JUDGMENT PRONOUNCED ON : 3RD AUGUST 2006

JUDGMENT :

. The Plaintiff claims to be a registered partnership firm running a restaurant under the name and

style RAJDHANI. The Plaintiff contends that its restaurant RAJDHANI has acquired a good reputation over the last forty years. The restaurant RAJDHANI serves Gujarati meals and/or Gujarati food in Mumbai as well as other places. The Plaintiff has also started serving Rajasthani meals/food. The Plaintiff provides catering services to office goers in the city as well as on social occasions and functions. The Plaintiff has set up another restaurant in Nasik offering the same services as their restaurant at Mulji Jetha Market in the city.

2. The Plaintiff contends that it is the proprietor of the name and mark RAJDHANI in relation to the restaurant business of food and beverages catering service in Mumbai. An application has been made for registration of the trade mark RAJDHANI (stylized) in class 42. The Plaintiff claims that it has generated an annual revenue of Rs.62,83,813/- for the year 2003-2004 in respect of its RAJDHANI restaurant.

3. The Plaintiff contends that it came across the Defendants using the same mark RAJDHANI. The Plaintiff, therefore, called upon the Defendants to cease and desist from using the name and mark RAJDHANI which was an essential feature of the Plaintiff’s trading name and style. It appears that despite several letters, the Defendants have continued to use the word RAJDHANI as their mark on the footing that it is a generic term and

nobody can claim a monopoly over such a name. The Plaintiff has, therefore, sought an injunction against the Defendants from using the word RAJDHANI in respect of their business.

4. On 6th May 2005, ad-interim reliefs were granted to the Plaintiff in terms of prayer clause (a). It appears that despite an injunction issued by this Court, the Defendants continued to use the name. The show cause notice issued to the Defendants was discharged on the Defendants tendering an unconditional apology. The Defendants filed a Motion for vacating the order passed on 6th May 2005. That Motion was withdrawn by the Defendants without prejudice to their rights qua the present Notice of Motion.

5. The Defendants have contended that the Plaintiff is not a registered partnership firm and, therefore, no Suit could be filed by such an entity. It is pointed out that despite a specific averment being made by the Defendants in the affidavit filed to oppose the Notice of Motion, the certificate of registration is not produced by the Plaintiff. It is submitted that the word RAJDHANI is used in common parlance and the Plaintiff cannot claim any distinctive use of this word. It is submitted that the word RAJDHANI is a generic term and the Plaintiff cannot claim exclusive use of the term. The Defendants have also pointed out that along with the term RAJDHANI they always use their logo and

hence there would be no cause for confusion in the mind of the public. It is further submitted that the Plaintiff has applied for registration of the mark RAJDHANI after filing the Suit and, therefore, there is no question of any infringement of this mark. The Defendants also submit that in order to establish that an action in passing off is maintainable, it is necessary for the Plaintiff to demonstrate that it had acquired a reputation and that their sales figures indicate that their services were widely used.

6. The Plaintiff has not produced the certificate of registration from the office of the Registrar of Firms to indicate it is a registered partnership firm. The Plaintiff was given a sufficient opportunity to produce the same, but to no avail. Since the Plaintiff is not a registered firm, no relief can be granted to it. Under the Partnership Act, only a registered partnership firm can file legal proceedings. There is no document on record to establish that the Plaintiff is a registered partnership firm and in such circumstances no relief can be granted to the Plaintiff as the Suit itself would not be maintainable.

7. Notice of Motion dismissed.

8. On the application of the learned Counsel for the Plaintiff, operation of this judgment is stayed for two weeks from today.